IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2457 OF 2006

M/s. Belsteel Industries ..Petitioner.

Vs.

Assistant Provident Fund Commissioner,
Kolhapur ..Respondent.

...

Mr. M.S. Topkar for the Petitioner.
Mr. Suresh Kumar for the Respondent.

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CORAM: DR. D.Y. CHANDRACHUD, J.

22nd June, 2006.

P.C. :

1. Rule. By consent of the learned counsel and at their request heard forthwith.

2. The Petitioner is a partnership firm registered under the provisions of the Partnership Act, 1932 and was brought within the purview of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 since 1994. The business of the Petitioner is stated to have been closed from March 1996 and it has been stated that prior to the closure of the business, the Petitioner employed 18 workers. On 22nd December, 2005 the Petitioner

received a communication from the Provident Fund Commissioner to the effect that it's factory was being attached. Accordingly, the land, building and movable properties came to be attached under a warrant of attachment. This was in pursuance of an order dated 30th August, 2004 by which the total dues outstanding came to be assessed at Rs.19,09,223/-. The order dated 30th August, 2004 recites that the Petitioner was summoned to appear before the Assistant Provident Fund Commissioner on 12th and 28th July, 2004, but no one has appeared. The Petitioner has averred that upon inspecting the record it is found that there is no acknowledgment of the Petitioner. An application was filed on 25th January, 2006 under Section 7-A(4) for recalling the ex parte order. The application was rejected by the order dated 17th February, 2006 on the ground that it was beyond the period of limitation. The contention of the Petitioner is that the entire action which culminated in the order dated 30th August, 2004 was without following the principles of natural justice. Moreover, it has been submitted that the period of three months which is prescribed under Section 7A(4) is from the date of the communication of an order under sub section (1) of Section 7A. The contention of the Petitioner is that the copy of the order was received only after 22nd

December, 2005. Hence, the application was within limitation.

3. Having heard the learned counsel and having considered the facts of the case, I am of the view that the ends of justice would require that the Petitioner is granted a proper and fair opportunity of being heard by the Provident Fund Authorities before an order of adjudication is passed under Section 7-A. At the same time it would be necessary to note that the period that has been covered by the impugned order dated 30th August, 2004 is from January 1995 to July, 2004. Even according to the averments of the Petitioner, the closure took place from March 1996. Hence, even if the contention of the Petitioner in regard to the closure of the unit were to be accepted, upon which no final conclusion can be drawn at the present stage, the Petitioner would still be liable to pay the dues from January 1995 until the date of the closure if validly effected. Having regard to all these facts and circumstances, a conditional order would be warranted in the interests of justice requiring the Petitioner to make some deposit as a condition precedent for setting aside the impugned order and for a hearing on merits. Such a conditional direction is also necessary to protect the interest of the Provident Fund Organisation which is maintained

as a measure of social security for employees.

4. Hence, the following order :

i) Conditional on the Petitioner depositing with the Respondent an amount of Rs. 1 lac within a period of two weeks from today, the impugned order dated 30th August, 2004 is quashed and set aside. The deposit shall be without prejudice to the rights and contentions of the parties. Thereupon the proceedings shall stand remitted back to the Respondent who shall pass a fresh order in accordance with law after furnishing to the Petitioner an opportunity of being heard;

ii) As a consequence of the quashing of the order dated 30th August, 2004, the attachment that has been levied shall stand raised. However, there shall be a direction to the effect that the Petitioner shall not alienate, part with possession or create any third party rights in respect of the property movable or immovable that was the subject matter of the attachment until the final decision of the Provident Fund Authorities and for a period of three months thereafter; and

iii) Subject to a deposit in accordance with clause (i), the Petitioner shall appear before the Respondent for directions in regard to the date of hearing on 12th July, 2006. The Petitioner shall co-operate with the Respondent by furnishing all necessary information for a proper determination under Section 7A. In the event that the Petitioner fails to appear as directed, the authorities will be at liberty to proceed according to law.

5. The Petition is disposed of in the aforesaid terms. There shall be no order as to costs.